GOVERNMENT OF THE DISTRICT OF COLUMBIA
COMMISSION ON HUMAN RIGHTS

In the Matter of:

COMPLAINANT,
Complainant,

v.

Docket Number 15-666-P (CN)
Dianne S. Harris
Administrative Law Judge

TRANSIT EMPLOYEES FEDERAL CREDIT UNION,
Respondent.
_____ /

FINAL DECISION AND ORDER

I. STATEMENT OF THE CASE:

Complainant alleges her former employer, Transit Employees Federal Credit Union ("TEFCU" or "Respondent"), subjected her to discriminatory treatment due to her age (61 years old) when it demoted and later terminated her in violation of the District of Columbia Human Rights Act ("DCHRA"). Complainant also alleges TEFCU retaliated against her for taking leave under the District of Columbia Family Medical Leave Act ("DCFMLA") when it discharged her four days after she returned to work from being on DCFMLA. TEFCU disputes Complainant's allegations, contending they had a legitimate nondiscriminatory reason for demoting and later dismissing her from employment. TEFCU also denies it retaliated against Complainant for taking DCFMLA leave, maintaining Complainant was fired after being on DCFMLA leave because of a legitimate nondiscriminatory reason. Complainant argues that TEFCU's given legitimate nondiscriminatory reason for demoting

and then firing her is a pretext for the real reason she was terminated: age discrimination and retaliation for the use of DCFMLA.

Procedural History of the Case

On April 20, 2015, Complainant filed her complaint with the District of Columbia Office of Human Rights ("OHR" or "the Office") on April 20, 2015. The Office investigated Complainant's complaint of discrimination and retaliation. On December 22, 2016, a Letter of Determination ("LOD") was issued to the parties finding probable cause that TEFCU had subjected Complainant to discriminatory treatment because of her age when they demoted and then fired her in violation of the DCHRA. OHR also found probable cause TEFCU retaliated against Complainant when they fired her after she took leave under the DCFMLA.

This matter was referred to OHR's Mediation Department for conciliation, to no avail. OHR then certified the case to the District of Columbia Commission on Human Rights ("Commission") on March 14, 2017 for adjudication. The matter was assigned to Administrative Law Judge Dianne S. Harris ("ALJ Harris" or "the undersigned"). On March 30, 2017, there was a status teleconference, and both parties were represented by counsel at the proceeding. A Scheduling Order was issued the same day and mailed electronically to the parties' legal representatives. The parties engaged in discovery. On July 26, 2017, Complainant filed a Motion to Compel Discovery. TEFCU filed an Opposition on August 4, 2017. The undersigned granted the Motion to Compel on August 11, 2017. Complainant filed a Motion for Sanctions on October 16, 2017, claiming that TEFCU had not complied with the Order to Compel Discovery in this case. TEFCU filed an Opposition to the Motion to Compel on November 8, 2017. The Motion

for Sanctions has been ruled on in this Final Decision and Order.

On October 25, 2017, TEFCU filed a Motion for Summary Judgment. Complainant filed an Opposition to the motion on December 22, 2017. Respondent filed a Reply to the Opposition on January 3, 2018. An Order Denying the Respondent's Motion for Summary Judgment was issued on January 23, 2018. An evidentiary hearing was held on March 1, 2, and 5, 2018. The parties submitted post-hearing briefs and responses. A Proposed Decision and Order was issued on May 13, 2019. Complainant filed Exceptions to the Proposed Decision on May 28, 2019. Respondent filed a Response to the Exceptions on June 17, 2019.

II. ISSUES

1. Whether Complainant was subjected to disparate treatment by TEFCU based on her age (61 years old) when it demoted her.
2. Whether Complainant was subjected to disparate treatment by TEFCU based on her age (61 years old) when it discharged her from her job with the company.
3. Whether TEFCU retaliated against Complainant for taking leave under DCFMLA by terminating her employment from the company.

III. FINDINGS OF FACT

1. Complainant was hired by TEFCU in November 2009 to fill the position of Collector. Stipulated Facts Not in Dispute [hereafter "Stipulated Fact"] #1.
2. Complainant came to TEFCU with 20 years of prior collection experience. Tr. Vol. 2 at 66:13-14.
3. Supervisor was Complainant's immediate supervisor when she was hired to work for TEFCU. BGJ/TEFCU Exhibit [hereafter "Ex."] 1.

4. Complainant was 61 years old during the events that give rise to her allegations of discrimination. Stipulated Fact #15.

5. On September 1, 2011, Complainant was promoted to Recovery Manager by President, TEFCU's President and CEO. Stipulated Fact #2.

6. President is responsible for overseeing TEFCU's Lending, Compliance, Human Resources, Recovery, Branches and Administration Departments. When Complainant was promoted to the position of Recovery Manager, President became her immediate supervisor. BGJ/TEFCU Ex. 2. Transcript Volume [hereafter referred to as Tr. Vol.] 1 at 33:3-5.

7. Complainant's job duties as a Recovery Manager included collecting payment on all accounts past due; monitoring and supervising the performance of collectors and recovery specialists, assigning accounts to outside collections agencies; recommending accounts be charged off; gathering information regarding delinquent loan activity for President's review; preparing necessary documents for internal and external audits; and working with outside vendors to ensure compliance with TEFCU's policies and procedures. BGJ/TEFCU Ex. #2.

8. The Recovery Department required four persons on staff, including the Recovery Manager, to adequately handle the department's workload. Tr. Vol. 1 at 87:11-88:7.

9. Employee 1, an employee of TEFCU, was responsible for assigning staff Complainant with staff to assist her in the Recovery Department and to report daily to President on how the department was functioning. Tr. Vol. 1 at 45:12-20.

10. President admitted Employee 1 did not know anything about the duties of the Recovery Department. Tr. Vol. 1 at 45:21-46:2.

11. President admitted in her testimony at the hearing that she had no knowledge of what was going on in the Recovery Department. Tr. Vol. 1 at 58:6-8.

12. Complainant's Overall Job Performance evaluation score for 2011-2012 was 3.41, which rated her as achieving TEFCU's expectations. Stipulated Fact #3.

13. The Overall Performance Summary for Complainant's job performance in 2011-2012 stated, "Since Complainant's promotion to Recovery Manager last year, Complainant has excelled in her role. The Recovery Department has improved over the last year, under Complainant's direction meeting its delinquency and recovery goals 80-90 percent of the time." Authenticity of the review is not disputed. Stipulated Fact #4.

14. In her 2011-2012 Annual Performance Evaluation, Complainant was identified as having problems with staff development and planning. It was also noted that TEFCU was involved in a class action lawsuit which was a result of the Recovery Department's failure to properly fill out recovery forms. Complainant also was cited for having failed to properly allocate the duties of the Department, causing her administrative and oversight duties to remain incomplete. Complainant did not offer any defense or explanation in the section of evaluation reserved for comments. Stipulated Fact #6.

15. Complainant's 2012-2013 Annual Performance Evaluation gave her unacceptable ratings for efficiency, accuracy/attention to detail, submission of paperwork that contained misspelled words and grammatical errors, missed deadlines and reporting to meetings unprepared. Stipulated Fact #7. Complainant did not offer a rebuttal or offer an explanation on the evaluation for the rating.

Stipulated Fact #7.

16. Complainant's overall performance evaluation score for 2012-2013 was 2.99 which was one 0.01 away from the rating of achieving TEFCU's expectations. Stipulated Fact #8.

17. On October 31, 2013, Complainant submitted a response to the Performance Review for 2012-2013 to President that stated, "I will move forward with a positive and upbeat attitude with great intensions (sic) to put a plan in place that will definitely help the department to be more organized." Stipulated Fact #10.

18. President identified Complainant as one of her "hardest working employees." Tr. Vol. 1 at 160:17-18.

19. President sent a memorandum ("memo") to Complainant on October 17, 2013 titled "Ongoing Concerns Regarding Leadership." In the memo, President noted that the Recovery Department under Complainant's management was still sending out improper recovery forms that had resulted in a class action lawsuit filed the prior year placing TEFCU at additional risk of further claims. President further cited concern over Complainant's poor attention to detail and failure to follow through on recovery processes to protect the credit union and insulate it from taking unnecessary losses. Stipulated Facts #11 and #12. TEFCU ended up settling the class action case for $300,000. Respondent also had to pay a $10,000 settlement in another lawsuit because Complainant did not follow the TEFCU policy concerning putting a stay on collecting car loan payments when the borrower had filed for bankruptcy. Tr. Vol. 1 at 232:14-22. There is no record of Complainant offering a written defense or an explanation for the concerns raised in the October 17, 2013 memo.

20. President also informed Complainant in her October 17, 2013 memo that further deterioration of her work quality could lead to discipline, up to and including termination. Stipulated Fact #13.

21. On April 4, 2014, President gave Complainant a memo stating that TEFCU was planning to reorganize their Recovery Department and Complainant would remain the Recovery Manager. Stipulated Fact #14.

22. In April 2014, TEFCU placed Employee 2 in charge of collections in the Recovery Department while retaining Complainant as the manager of the Recovery Division. Complainant was assigned the task of training Employee 2, who had no collection experience. Employee 2 was 49 years old, and Complainant was 61. Stipulated Fact #15. Tr. Vol. 1 at 52:22-53:2.

23. Employee 2 was terminated from TEFCU on May 20, 2014. The stated reason for her dismissal was "We believe the working relationship in the Recovery Department is not working out." Stipulated Fact #18. Employee 2 was only employed by TEFCU for one month. Tr. Vol. 1 at 51:9-10.

24. On October 29, 2014, President notified Complainant in writing she was being demoted from her position as Recovery Manager and her salary was also being reduced for "poor work performance." The notice of demotion faulted Complainant for having a backlog in her work responsibilities for the Chex System, tax levies, garnishments, bankruptcies, and E-Oscar disputes. The notice of demotion cited Complainant for failure to properly track the statute of limitations on outstanding accounts that resulted in $213,219.72 loss of loan payments. Stipulated Facts #32, 33, and 34.

25. Following Complainant's demotion, Employee 3 was assigned by TEFCU to the position of collections team leader despite having no work experience doing collections. Tr. Vol. 1 at 62:13-63:2. Employee 3 was working for TEFCU in another department when she was reassigned to the Recovery Department. Tr. Vol. 1 at 96:6-10. Although President testified she did not know Employee 3's actual age, she did acknowledge that Employee 3 appeared to be younger than Complainant. Tr. Vol. 1 at 301:1-16.

26. The notice of demotion stated that, "it is our expectations (sic) that moving forward, you will conduct yourself in a professional manner improving in your recovery numbers. Failure to do so will result in disciplinary action up to and including termination." Stipulated Facts #35 and 36.

27. At the time Complainant was demoted, her monthly collections were below the $20,000 amount of what TEFCU regarded as being acceptable. Tr. Vol. 1 at 169:4-5.

28. President determined that assigning Employee 3 to handle Complainant's administrative duties would allow her more time to focus on her recovery duties and would help bring up her collection numbers. Tr. Vol. 1 at 170:1-9. Complainant was also required to prepare the packets for TEFCU Board of Directors' monthly meetings. *Id.*

29. The reporting period for the Recovery Department that ended November 14, 2014 was the lowest monthly figure during the 2013-2015 period. Joint Exhibit [hereafter "JE"] 14. Stipulated Fact #38.

30. Although Complainant was demoted, there was no one assigned to carry out

her duties as Recovery Manager. President still expected Complainant to perform her supervisory duties as Recovery Manager after her demotion and her reduction in pay. Tr. Vol. 1 at 62:13-63:2.

31. Under Complainant's management of the Recovery Department, the accounts were processed manually rather than by using TEFCU's software program (Symitar) The Complainant preferred to work the accounts manually because of her mistrust of the Symitar system, which she found to be inaccurate. Tr. Vol. 1 at 305:12-20, Tr. Vol. 2 at 16:6-17.

32. In November 2014, Complainant filed a request for medical leave under DCFMLA to undergo foot surgery in December 2014. TEFCU approved her request. Complainant was out of the office from November 24, 2014 until December 8, 2014. Stipulated Fact #44.

33. On December 12, 2014, four days after her return to work, TEFCU terminated Complainant from her position alleging poor work performance. Resp. Ex. 53. TEFCU's termination notice cited additional performance problems occurring after Complainant's demotion on October 29, 2014, including failing to to properly code bankruptcies, her failing to inquire about alleged "issues" with the collection system, requiring employees to "manually" work collection accounts, which slowed progress on collection and recovery, and diminishing recovery revenues in recent months. *Id*.

34. Following Complainant's dismissal from TEFCU, Employee 3, who was working in the Recovery Department at that time, was hired to the position of Recovery Manager. Tr. Vol. 1 at 84:11-14. Employee 3 was also later fired for poor

work performance issues. *Id.* 53.

35. TEFCU has company policies that prohibit discrimination against persons due to race, color, national origin, religion, disability, and age. Tr. Vol. 1 at 34:9-22.

36. Complainant was aware of TEFCU's company policies that prohibit discrimination against persons because of their age but by her own admission she did not report her allegations of age discrimination to management during her tenure with the company. Tr. Vol. 2 at 239:2-20.

37. President admitted she had no training in EEO policies or Human Resources. Tr. Vol. 1 at 35:1-5.

37. Complainant cited an incident where President told her when she got to be her age she would be glad to have someone younger take over her job responsibilities. Complainant further testified that President referred to her as being "old school." President denied the allegations. Tr. Vol. 1 at 178:12-17. Based on the undersigned's observation of both witnesses' demeanor and testimony at the hearing and she finds them to be equally credible.

IV. DISCUSSION

1. *Whether Complainant was subjected to disparate treatment based on her age (61) when she was demoted on October 29, 2014 by TEFCU.*

Complainant maintains that TEFCU discriminated against her because of her age in violation of the DCHRA when it demoted her on October 29, 2014. The broad purpose of the DCHRA is "to secure an end in the District of Columbia to discrimination for any reason other than hat of individual merit." *See* D.C. CODE § 2-401.01. The District of Columbia Court of Appeals has stated: "The Human Rights Act is a broad remedial statute and is generously construed." *George Washington University v. District of Columbia Board of*

Adjustment, 831 A.2d 921, 939 (D.C. 2003) citing *Wallace v. Skadden Arps, Slate, Meagher & Flom*, 715 A.2d 873, 889 (D.C. 1998); *Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392, 398 (D.C. 1991). The District of Columbia Court of Appeals has also held that "[t]he right to equal opportunity without discrimination based on age or other such invidious ground is protected by a policy to which both this nation and its capital city accorded the highest priority." *Harris v. District of Columbia Commission on Human Rights*, 562 A.2d 625, 626 (D.C. 1989).

Under the DCHRA, it shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially, for a discriminatory reason based upon the actual or perceived: age of any individual: (1) *By an employer*- To fail or refuse to hire, or to discharge, any individual or otherwise discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his status as an employee. D.C. CODE § 2-1402.11 (a) (1). The Act defines "age" as "18 years of age or older." *See* D.C. CODE § 2-1402.02.1.

Complainant alleges she was subjected to disparate treatment by TEFCU due to her age (61). The standard for meeting the burden of proof in disparate treatment cases is set forth in *McDonnell Douglas v. Green*, 411 U.S. 792, 802 (1973); *Texas Office of Community Affairs v. Burdine*, 450 U.S. 248, 248-9 (1981); *accord Rap, Inc. v. District of Columbia Commission on Human Rights*, 485 A.2d 173, 176 (D.C. 1984); and *Cain v. Reinoso*, 43 A.3d 302, 306 (D.C. 2012). Under the *McDonnell Douglas* analytical construct, a complainant has the burden of proof in establishing a *prima facie* case. The Court held in

Furnco Construction Corp. v. Waters, 438 U.S. 567, 577 (1978), that once the plaintiff has established a *prima facie* case of discrimination, it "raises the inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors."

The burden of production then shifts to the reespondent to articulate a legitimate nondiscriminatory reason for taking the action in question. The burden the defendant must meet is only to articulate a legitimate, nondiscriminatory reason for the action in question, not to prove that the reason given was the actual reason for the action taken. *McDonnell,* 411 U.S. at 804. Should the respondent meet their burden of articulating a legitimate nondiscriminatory reason for the conduct, the
complainant then must prove by a preponderance of the evidence that the legitimate reasons offered by the respondent were not the true reasons for the action taken, but pretext for discrimination. *Texas Office of Community Affairs*, 450 U.S. at 254 (1981); *Hollins v. Federal National Mortgage Association*, 760 A.2d 563, 569 (D.C. 2000). The burden of proof of showing the respondent intentionally discriminated against the complainant always remains with the complainant. *See Board of Trustees of Keene State College v. Sweeney*, 439 U.S. 24, 25 (1978).

To establish a *prima facie* case of discrimination, a complainant has the burden of proof to demonstrate that:

(1) she has a protected trait and respondent knew or suspected that she had a trait;

(2) she suffered an adverse action;

(3) the adverse action occurred despite her employment qualifications; and

(4) she adverse action gives rise to an inference of discrimination.

See Cain, 43 A.3d at 307; *Arthur Young* & *Co. Sutherland*, 631 A.2d 354, 362 (D.C. 1993).

Applying the facts of this case to the elements of the *prima facie* case of age discrimination, Complainant is found to have established the first element – that she has a protected trait (age). The DCHRA lists age as being a trait that is protected under the Act. *See* D.C. CODE § 2-1401.11 (a) (1); D.C. CODE § 2-1401.02(2). It is undisputed that Complainant was 61 years old at the time of her demotion from her position of Recovery Manager. Finding of Fact at ¶ 2 [hereinafter cited as "Facts"].

Complainant has met the second element – that she suffered an adverse action. It is undisputed that Complainant was demoted from her position of Recovery Manager by President. *See* Facts at ¶ 17.

Complainant has met the third element – that she experienced an adverse action that occurred despite her employment qualifications. Complainant had 20 years of experience as a collector and had been rated in her 2011-2012 annual performance review as meeting the qualifications for the job. Facts at ¶¶ 5 and 8.

Complainant has established the fourth element – that the adverse action she experienced had the inference of discrimination. Complainant alleges that she was demoted from her job because of her age. Complainant contends President,

had made disparaging remarks to her about her age and the persons who were assigned to take over her job responsibilities after she was demoted were younger.

The burden now shifts to TEFCU to articulate a legitimate nondiscriminatory reason for why Complainant was demoted from her job with the company. *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 142 (2000); *Lathram v. Snow*, 336 F.3d 1085, 1088 (2003). TEFCU offered a legitimate nondiscriminatory reason for firing Complainant, poor

work performance. Complainant contends Respondent's stated reason for her dismissal is pretext and that the real motive for her discharge was age discrimination. *Lathram,* 336 F.3d at 1088-89.

To support her claim, Complainant cited two incidents that occurred when she was speaking with President. The first incident Complainant alleges took place when President told her that, when she got to be her age she would be glad for someone younger to assume her job duties. The second incident took place according to Complainant when President told her that she was "old-school." President denied making these statements. The undersigned found that both witnesses were equally credible and that she was unable to make a finding based on the preponderance of the evidence that these comments were made. Complainant also offered as proof of her claim of age discrimination the fact the two persons selected to take over her work responsibilities were substantially younger. It is undisputed that these two women were also terminated for poor work performance a short time after they assumed the reassignment. Accordingly, Complainant has not met her burden of proof that TEFCU's articulated legitimate non-discriminatory reason for her separation from employment was pretext. The Commission has no alternative but to find she has failed to meet her burden of proof she was subjected to disparate treatment on the basis of age.

2. *Whether Complainant was subjected to disparate treatment based on her age (61) when she was terminated on December 12, 2014 by TEFCU.*

Complainant contends that TEFCU subjected her to disparate treatment because of her age in violation of the DCHRA when they fired her on December 12, 2014. As stated previously the broad purpose of the Act is to secure an end to discrimination. To establish a *prima facie* case of disparate treatment, a complainant has the burden of proof to demonstrate

that:

(1) she has a protected trait and Respondent knew or suspected that she had a trait;

(2) she suffered an adverse action;

(3) the adverse action occurred despite her employment qualifications

(4) the adverse action gives rise to an inference of discrimination.

See Cain at 307; *Arthur Young* at 362.

Complainant has established that she has a protected trait under the DCHRA - her age. Complainant has shown that she suffered an adverse action - she was fired from her job with TEFCU. The undersigned finds that the adverse action occurred despite her employment qualifications. Finally, Complainant was replaced by someone younger. Accordingly, the undersigned finds her firing gives rise to an inference of discrimination due to age.

The burden now shifts to TEFCU to articulate a legitimate nondiscriminatory reason for why she was fired. *See Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 142 (2000); *Lathram v. Snow,* 336 F.3d 1085, 1088 (2003). TEFCU has stated a legitimate nondiscriminatory reason for the Complainant's termination: poor work performance. Complainant contends Respondent's proffered reason for her firing is pretext and the real motive she was let go was age discrimination. *Lathram,* 336 F.3d at 1088-89.

The undersigned finds that the TEFCU did have a legitimate nondiscriminatory reason for Complainant, poor work performance. TEFCU's termination notice cited additional performance problems that surfaced after Complainant's demotion on October 29, 2014, including failure to properly code bankruptcies, her failure to inquire about alleged "issues" with the collection system, causing employees to "manually" work

collection accounts, which slowed progress on collection and recovery, and diminishing recovery revenues in recent months. The undersigned again finds that Complainant has failed to prove that Respondent's legitimate nondiscriminatory was pretext for discrimination. Accordingly, the Complainant has not established that she was subjected to disparate treatment based on her age when she was terminated.

3. *Whether TEFCU retaliated against Complainant for taking leave under DCFMLA by terminating her employment from their company.*

Complainant contends that she was fired after taking leave under DCFMLA. The District of Columbia Family and Medical Leave Act applies to employers who employ twenty (20) employees or more in the District of Columbia. D.C. CODE §32-515. An employee becomes eligible for DCFMLA benefits after the individual has been employed by the employer for one year without a break in service except for regular holiday, sick, or personal leave granted by the employer and has worked one thousand (1,000) hours or more during the twelve (12)-month period immediately preceding the request. D.C. CODE § 32-501.

Under the DCFMLA, eligible employees are provided with a total of sixteen (16) work weeks of medical leave during any twenty-four (24)-month period when an employee becomes unable to perform the functions of his or her position due to a serious health condition, for as long as the employee is unable to perform the functions of his or her position. D.C. CODE § 32-503. The DCFMLA does not require an employer to provide additional paid family and medical leave. However, an employee may elect to use any paid family, vacation, personal, or compensatory leave provided by an employer for family leave, or any medical or sick leave sick leave provided by an employer for medical leave. This leave may be taken intermittently when medically necessary. *Id.*

Pursuant to the DCFMLA there are two types of claims available to the applicant – interference and retaliation. An employee may bring an interference claim when the employer denies family or medical leave and the employee suffered damages from that denial. D.C. CODE § 32-507 (a)-(b). The second type of claim is based on the theory that an employer may not discriminate, in the form of retaliation, against an employee who asserts a right under the DCFMLA. As a result, such claims are analyzed in much the same manner as Title VII retaliation cases. In this case, the only type of DCFMLA claim that the Commission may address is retaliation, the claim OHR found probable cause for. Complainant's Complaint to OHR included retaliation and interference allegations. However, OHR did not find probable cause regarding the interference allegation. Pursuant to D.C. CODE 2-1403.10, a finding of probable cause by OHR is required before the Commission can entertain the claim.

The elements of a *prima facie* case for retaliation under DCFMLA are:

(1) The employee engaged in a protected activity by exercising a right protected by the DCFMLA.

(2) An adverse action that was related to the employment of the employee took place.

(3) Temporal proximity exists between participation in the protected activity and he adverse action.

Chang v. Inst. for Public-Private P'ships, 846 A.2d 318, 329 (D.C. 2004)

Complainant engaged in a protective activity, taking leave to undergo a medical procedure. Complainant suffered an adverse action following exercising this right, being fired.

There was close temporal proximity of participation in the protected activity and the adverse action. Complainant was on DCFMLA leave from November 24. 2014 to December 8, 2014. On December 12, 2014, four days after she returned to work, she was terminated.

Once the Complainant has established a *prima facie* case, the burden shifts to the Respondent to show there was a legitimate non-discriminatory reason for the adverse action. *Lathram v. Snow*, 336 F.3d 1085, 1088 (D.C. Cir. 2003). It is TEFCU's position Mrs. because she took DCFMLA which they approved. TEFCU's termination notice cited additional performance problems that had continued after the October 29, 2014 demotion, including failing to properly code bankruptcies, failure to inquire about alleged "issues" with the collection system, causing employees to "manually" work collection accounts, which slowed progress on collection and recovery, and diminishing recovery revenues in recent months. Facts at ¶ 32. Accordingly, Complainant has failed to establish that Respondent retaliated against her for taking leave under DCFMLA when they terminated her**.**

V. EXCEPTIONS

Complainant submitted a thirty-one paged document of exceptions it contends the Commission should consider in ruling in her favor in this matter. The arguments set forth in the Exceptions are primarily related to her allegations that her work performance was hindered by several factors she had no control over, namely, a lack of staff; being assigned to train inexperienced staff, which took time from her being able to do her own work; and being given a software system that was inaccurate, causing her and her staff to work cases manually

which also took more time than by doing the work electronically. Complainant also noted declining revenues and losses experienced by the TEFCU in November were due to it being the time of year when that business slowed down around the approaching holidays.

In Complainant's arguments there is little discussion of the issues that are before the Commission: whether Respondent subjected her to disparate treatment due her age when it demoted her and subsequently fired her and whether it retaliated against her for the use of DCFMLA. The Commission has made every effort to provide Complainant with the opportunity to present her case. However she has been unable to substantiate her allegations with the evidence she has presented at the hearing that her demotion and subsequent firing were due to age discrimination and her dismissal was related to her use of DCFMLA.

VI. CONCLUSIONS OF LAW

1. Complainant has failed to establish that she was subjected to disparate treatment based on her age (61) when she was demoted from her job by TEFCU.
2. Complainant has failed to establish that she was subjected to disparate treatment based on her age (61) when she was fired from her job by TEFCU.
3. Complainant has failed to establish that TEFCU retaliated against her for taking DCFMLA.

VII. RULING ON THE COMPLAINANT'S MOTION REQUESTING SANCTIONS

Counsel for Complainant has filed a Motion for Sanctions against opposing counsel for failure to answer Complainant's Interrogatories and Request for Production of Documents. The undersigned issued an Order to Compel setting a deadline of August 18, 2017 for discovery responses to be filed.

Complainant contends that the Respondent failed to provide a response to her

Interrogatory 15 and that the failure to provide the information by August 18, 2017 argument that Respondent failure to provide the information by August 18th prevented counsel from gaining contact information concerning additional individuals who could have been helpful in the preparation to depose President. Complainant argues the information she was seeking was crucial in showing the Recovery Department was short staffed, which affected her ability to carry out her job duties.

Respondent opposed the Motion for Sanctions. It was TEFCU's position that they had produced 3,500 documents in response to OHR's investigation and 50 documents made by the Complainant prior to the Motion. An additional 2,500 documents were supplied on August 18, 2017. Four more documents were submitted on September 28, 2017 to the Complainant. On October 3, 2017, Respondent submitted 68 more documents to Complainant. A final round of 1,000 documents were submitted on January 3, 2018 to Complainant. Respondent argued the issue before the undersigned was whether Complainant was discriminated against due to her age and the documents requested were not relevant to that issue.

D.C. Super. Ct. R. Civ. P. 26 (b) (1) states in part, "Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the Court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."

The undersigned finds that the counsel for Respondent did make a good-faith effort to supply the information given the fact that the files were in several locations and the President was unavailable during the month of August due to health issues. Another consideration was the voluminous number of documents that counsel for Complainant requested. Accordingly, the undersigned does not find issuing an Order for Sanctions warranted.

VIII. ORDER

The Commission enters a judgment for the Respondent and the Complainant's complaint is dismissed with prejudice.

_____

/s/ Commissioner Wynter Allen

_____

/s/ Commissioner Adam Maier

_____

/s/ Commissioner Ali Muhammad

So Ordered, this 2nd day of July 2019